



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

DEC 07 2001

D-8J

Mark F. Giesfeldt, Director  
Bureau for Remediation and Redevelopment  
Wisconsin Department of Natural Resources  
P. O. Box 7921  
Madison, WI 53707

Suzanne Bangert, Director  
Bureau of Waste Management  
Wisconsin Department of Natural Resources  
P. O. Box 7921  
Madison, WI 53707

DEC 1, 2001

Dear Mr. Giesfeldt and Ms. Bangert:

Thank you for your letter dated November 29, 2001 wherein you describe a proposed WDNR pilot project regarding liability for Local Governmental Units or qualified Economic Development Corporations ("LGUs") under the Wisconsin Hazardous Waste Management Law. Specifically, WDNR proposes to utilize its enforcement discretion at certain hazardous waste management sites where LGUs acquire a property interest at the site, but where such LGUs have not acted in such a way to cause the contamination. If the LGU implements site remediation, the cleanup activities must comply with all State hazardous waste management requirements. Our understanding is that WDNR will choose to utilize its enforcement discretion with respect to the liability of the qualified LGUs under State law, and that any cleanups done at the sites will be carried out in a manner consistent with Wisconsin's authorized program.

Wisconsin, acting through WDNR, has the ability to use its enforcement discretion in deciding how and where to utilize the enforcement powers derived from State law, provided that the exercise of such discretion does not diminish the stringency with which the authorized State hazardous waste management program is implemented in Wisconsin. Moreover, cleanups at corrective action sites where Wisconsin utilizes its enforcement discretion must still result in cleanups that are protective of human health and the environment, and which are carried out in a manner consistent with the corrective action requirements of the Resource Conservation and Recovery Act (RCRA).<sup>1</sup>

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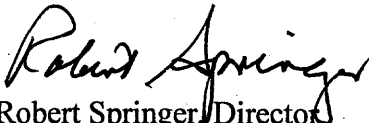
<sup>1</sup> Some of these corrective action requirements include: (a) the requirement for facility-wide assessments in the CA context; (b) all releases of hazardous wastes or constituents into the environment from all Solid Waste

USEPA, like WDNR is committed to revitalizing unused or underused properties which are commonly referred to as "brownfields." We are hopeful that a pilot project like the one proposed by WDNR, which utilizes State enforcement discretion to limit the liability of certain parties, provided that your statutory requirements are met, will provide useful information to our respective agencies in the brownfields context. It is our mutual goal that this pilot will result in more properties being cleaned up and reused, many of which have become significant burdens to Wisconsin communities.

We look forward to discussing the results of this pilot project with WDNR, and we continue to enjoy working with you on important issues related to brownfields redevelopment.

Please do not hesitate to contact me, or Gerald W. Phillips of my staff at (312) 886-0977 if you have any questions.

Sincerely,



Robert Springer, Director  
Waste, Pesticides and Toxics Division

cc: M. Gordon, WDNR  
M. Hale, OSW  
M. Martin, OSEA  
K. Peaceman, ORC  
G. Phillips, WPTD

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Management Units (SWMUs) and Areas of Concern (AOCs) are addressed (on and off-site); © remedies are protective of public health and the environment; and (d) there are meaningful opportunities for public involvement at the site. AOCs include areas contaminated by releases that are not attributable to SWMUs.